Canada Industrial Relations Board Conseil canadien des relations industrielles

C.D. Howe Building, 240 Sparks Street, 4th Floor West, Ottawa, Ont. K1A 0X8
Édifice C.D. Howe, 240, rue Sparks, 4e étage Ouest, Ottawa (Ont.) K1A 0X8

Reasons for decision

Martin Benoit,

complainant,

and

Teamsters Local Union 91,

respondent,

and

United Parcel Service Canada Ltd.,

employer.

Board File: 28175-C
Neutral Citation: 2011 CIRB **568**
February 15, 2011

The Canada Industrial Relations Board (the Board) was composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. André Lecavalier and Norman Rivard, Members.

Section 16.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) provides that the Board may decide any matter before it without holding an oral hearing. Having reviewed all of the material on file, the Board is satisfied that the documentation before it is sufficient for it to determine this complaint without an oral hearing.

Parties' Representatives of Record

Mr. Martin Benoit, for himself;
Mr. David Spears, for Teamsters Local Union 91; and
Mr. Denis Manzo, for United Parcel Service Canada Ltd.

These reasons for decision were written by Mr. Norman Rivard, Member.

I–Nature of the Complaint

[1] This complaint was filed on June 1, 2010, by Mr. Martin Benoit (the complainant), alleging violation of section 37 of the *Code* by the Teamsters Local Union 91 (the union).

[2] The complainant alleges that the union refused to represent him in French and further refused to represent him at a Workplace Safety and Insurance Board of Ontario (WSIB) hearing because he was insisting on being represented in French. He further claims that he has been unable to obtain a French copy of the collective agreement.

II–Background and Facts

[3] The complainant is a part-time courier driver with United Parcel Service Canada Ltd. (UPS or the employer), working out of Ottawa. He has been employed with UPS since January 2003.

[4] On January 5, 2010, the complainant suffered a back injury while working at the UPS depot. He was on sick leave for one month, during which time he received WSIB benefits.

[5] On March 20, 2010, the complainant was advised in writing by the WSIB that UPS was contesting the WSIB's decision to pay the complainant for the time he was off work on sick leave.

[6] On March 23, 2010, the complainant sent two letters to the union, asking to be represented in French, and informing the union that UPS was contesting the WSIB's decision to pay him benefits.

[7] The complainant wrote to the union on April 8, 2010, advising it that he wanted to file a grievance against UPS for contesting the WSIB's payment of benefits.

[8] On May 7, 2010, the complainant sent all the documentation pertaining to his WSIB claim to the union's business agent, Mr. Roy Graham, in order to be represented by the union.

[9] In a letter dated May 13, 2010, the complainant asked the union to represent him at the WSIB hearing.

[10] On May 13, 2010, the union replied to the complainant's request in a letter that reads in part as follows:

> With respect to your WSIB matter, as you are aware these issues are governed by legislation and fall outside of the terms of the collective agreement. We have no ability to grieve a decision by the WSIB. Any rights you have under the legislation are personal to you. Local 91 does assist members in dealing with issues that may arise with respect to WSIB. On occasion, we advise the member to seek assistance from an advocate who specializes in this type of work. In your case, because the WSIB material is in French, we simply do not have the capacity to handle your case. WSIB files are often extensive and contain technical material; our WSIB specialist is not comfortable in dealing with material if it is in French.

[11] The complainant submits that, since he was hired at UPS, he has never been able to be represented in French; therefore, he had no choice but to represent himself at the WSIB hearing.

III–Positions of the Parties

A–The Complainant

[12] The complainant filed a large number of documents with the Board. The following is a summary of the allegations made in his complaint.

[13] The complainant submits that the union refused to represent him at a WSIB hearing because he was asking that the hearing be held in French, as this is his first language. Therefore, he had to represent himself before the WSIB with respect to the claim that was being contested by the employer.

[14] The complainant submits that he is being discriminated against, and he maintains that since he has been working for UPS, he has never been able to receive services in his first language, that is, in French. He submits that he has the right to be represented in French.

[15] As remedy, he is seeking to be represented in French by his union at the WSIB hearing. The complainant also wishes to obtain a copy of the collective agreement, as well as other documents, in French. On July 29, 2010, the complainant sent a letter to the union, formally requesting a collective agreement in French.

[16] On September 28, 2010, the complainant advised the Board that he has since returned to work on September 24, 2010, adding that it was not the union that assisted him in returning to work. He maintains that the union is still not providing him with any assistance in French.

B–The Union

[17] According to the union, Mr. Benoit is fluently bilingual and works in an environment that is predominantly English. The union submits that the complainant has been receiving representation in English since he began working at UPS. The union alleges that he is raising the language issue for the sole purpose of furthering a claim against either the union or the employer. It explained that, of the five full-time representatives employed by the union, only one is fluently bilingual and able to provide services to bargaining unit members in French. The business representative responsible for the UPS bargaining unit is unilingual English.

[18] The union states that, while the Ottawa Depot has a number of bilingual workers and management staff, workers must be able to function in English in order to work at that depot. The union provided the following information in this regard:

1) all instructions and directions are given to the workers in English;

2) training is done in English;

3) most workplace forms and written material are in English; and

4) labour relations between the union and UPS have always been conducted in English.

[19] The union states that Mr. Benoit speaks and writes in English, and that up until very recently, he was interacting with his supervisor in English. He has communicated with the union in English, filed his grievances in English, and filed previous complaints with the Board in English.

[20] The union submits that, up until recently, the complainant's preferred language of communication was English and that he had never previously complained or even made a request to the union with respect to being represented in French.

[21] The union states that the complainant's attitude changed in February 2010, when he was disciplined for insubordination; he filed a grievance in French and claimed that he had been disciplined because he no longer wanted to speak English.

[22] On February 22, 2010, the union's business agent, Mr. Graham, arranged a grievance meeting with UPS in an effort to resolve the above-noted disciplinary matter. Mr. Benoit refused to attend the meeting with the employer; consequently, the business agent arranged to have the complainant in a separate room and he shuttled between the two rooms in an effort to resolve the grievance.

[23] According to the union, during the February meeting, the complainant told Mr. Graham that he wanted a French representative. Mr. Graham reminded him that the union had always represented him in English, that it had never been a problem, and that if he insisted for a French representative, it would slow down the process. Mr. Graham told the complainant that he could arrange to have a French supervisor attend the meeting. Mr. Benoit finally agreed that the meeting could proceed in English and the grievance was resolved.

[24] The union states that from March 23, 2010 on, it took steps to assist Mr. Benoit with respect to understanding all communications pertaining to his case. On March 31, 2010, the union brought in a bilingual business representative to assist with any translation issues. Shortly after the meeting began, Mr. Benoit stated that he would prefer to speak with counsel in English rather than use the assistance of a translator. He stated that it was only in situations where he would be dealing with UPS that he preferred to speak French.

[25] On July 6, 2010, the union sent another letter to the complainant, which read in part as follows:

> With respect to communicating with you in French, we are trying to accommodate you with the limited resources that we have. As you can appreciate, it is extremely busy at the Local and we simply do not have time or the ability to accurately translate all our communications for you. We are aware that both you and your mother are fluently bilingual. We trust that you are able to understand our letters. If however you have difficulty with respect to understanding anything, or if you have any questions whatsoever about your grievances, please let us know. We will do what we can to explain things.

[26] The union submits that the complainant does not have a right, under the collective agreement, the *Code*, or any other statute, to be represented by the union in French, notwithstanding that the union has taken reasonable steps to assist the complainant in being understood in his allegedly preferred language. Furthermore, the union submits that it does not have an obligation to represent the complainant with respect to WSIB matters as they fall outside of the terms of the collective agreement.

[27] The union submits that it has not breached its obligations to the complainant under section 37 of the *Code* and is asking that this matter be dismissed.

C–The Employer

[28] The employer sent the Board a letter, stating that it had taken note of the complainant's complaint and the union's response.

[29] The employer states that the complainant has access to a collective agreement in French and English. Furthermore, the employer submits that the complainant is perfectly bilingual and that he has never had any difficulties communicating with the clients or his colleagues in French or English.

[30] According to the employer, the complainant has been in its employ for several years now and this question has never been an issue until recently, when the complainant received a warning for insubordination towards his supervisor.

IV–Analysis and Decision

[31] In reviewing the material on file, the Board notes that the complainant was involved in a number of other issues regarding the workplace that are not necessarily related to this complaint, and, therefore, will not refer to those issues. Section 37 of the *Code* reads as follows:

> 37. A trade union or representative of a trade union that is the bargaining agent for a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit with respect to their rights under the collective agreement that is applicable to them.

[32] Since the complainant bears the burden of proof in a complaint under section 37 of the *Code*, he or she must present sufficient facts to establish that, on a balance of probabilities, the union contravened its obligations under section 37 of the *Code*. The Board will usually find that a union has fulfilled its duty of fair representation if it has investigated the circumstances, obtained the full details of the case, considered the merits of the complaint, made a reasoned judgment about whether to pursue the issue, and if it advised the employee of the reason for its decision.

[33] The Board does not second-guess the actual decision made by the union. A section 37 complaint before the Board cannot serve as an appeal of the union's decision, but is used to assess the union's decision-making process, and not the merit of the union's decision (see *Fred Blacklock*, 2001 CIRB 139; and *Yvonne Misiura*, 2000 CIRB 63).

[34] The Board understands that the complainant may have undergone a difficult period after his work-related injury and as a result of a particularly complex personal situation. The Board seriously considered the complainant's allegations that he had not been properly represented by his union because he is a francophone. This is a very sensitive issue to which unions must pay particular attention. The Board dealt with that issue in *Francesco La Giorgia*, 2004 CIRB LD 1162.

In that case, the Board was dealing with a complaint filed pursuant to section 37 of the *Code* and in which the complainant alleged that his union had discriminated against him because he spoke English and that it was not providing services in both official languages. The Board made the following comments in this regard:

> Nevertheless, the Board wants to comment on the issue of the communication and language, which is of importance to the complainant. It is true that the language and jargon used by labour relations practitioners can be overwhelming to members who are dealing with the union, especially if the conversation or documentation is not in the official language of their choice.
>
> Although there appears to be no contractual or legal obligation for the union to address the complainant in English, in such circumstances, it may be advisable for the union to attempt to find someone who can assist him, or any other member for that matter, in his preferred language. This may avoid misunderstandings especially at times when the paying members need to fully understand and be comfortable with the union's decisions regarding their grievances. ...
>
> (page 8)

[35] The Board is of the opinion that those comments are still as appropriate and valuable. In a section 37 complaint, the language issue must be assessed on the basis of the specific context and facts of each case.

[36] In this case, the Board noted that the union and the complainant worked in an English-speaking environment and that the union's bilingual human resources were very limited. However, the union did make some efforts to ensure that the complainant fully understood the status of his cases and the correspondence that was sent to him. Furthermore, the Board took note of the union's commitment to provide a French version of the new collective agreement to the complainant.

[37] Moreover, the Board noted that, at the meeting held on March 31, 2010, the complainant had chosen to address the union in English and not to use the translation services that were offered to him.

[38] The facts reveal that the union turned its mind to this case and made efforts to accommodate the complainant in French with the resources it had. Furthermore, the material on file indicates that the complainant had a very good understanding of the English language.

[39] Furthermore, the Board finds the union is correct in its statement to the effect that it does not have an obligation to represent the complainant with respect to WSIB matters as they fall outside of the terms of the collective agreement.

[40] After careful examination of the written material filed by the parties, the Board finds no evidence that the complainant was discriminated against or that the union acted in bad faith or arbitrarily. The Board is therefore of the opinion that, in this case, the union did not breach its duty of fair representation under section 37 of the *Code*.

[41] For all the reasons cited above, the complaint is dismissed.

[42] This is a unanimous decision of the Board.

Louise Fecteau
Vice-Chairperson

André Lecavalier
Member

Norman Rivard
Member